

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

GOWANUS INDUSTRIAL PARK, INC.,

Plaintiff,

- against -

ARTHUR H. SULZER ASSOCIATES, INC.,

Defendant.

06cv0105 (SJ) (JO)

DECLARATION OF  
JAMES M. MALONEY

JAMES M. MALONEY, an attorney at law admitted to practice before this Honorable Court, declares and affirms under penalty of perjury as follows:

1. I represent the Defendant in the above-captioned action.
2. I submit this declaration in support of Defendant's motion for Rule 11 sanctions, which declaration, together with its exhibits and supporting Memorandum of Law, is being served on April 4, 2006, for overnight delivery so that receipt by plaintiff's counsel will occur on April 5, 2006, commencing the "safe harbor" period.
3. My statements herein are based on my knowledge of the file from the date the action was commenced in state court (December 5, 2005) to the present time .
4. A true copy of the summons and complaint in that action is attached hereto as

**Exhibit 1.**

5. A true copy of the Answer with Counterclaims filed with this Court after the action was removed by Defendant is attached hereto as **Exhibit 2.**

6. A true copy of correspondence written by the undersigned declarant to James Klatsky, Esq., attorney for the Plaintiff, and sent by Certified Mail on February 10, 2006, immediately following a telephonic conference, is attached hereto as **Exhibit 3.**

7. True copies of requests for production propounded by Plaintiff, and of Defendant's timely responses, are attached hereto as **Exhibit 4**.

8. A true copy of Defendant's request for production of documents, to which Plaintiff has not yet responded, is attached hereto as **Exhibit 5**.

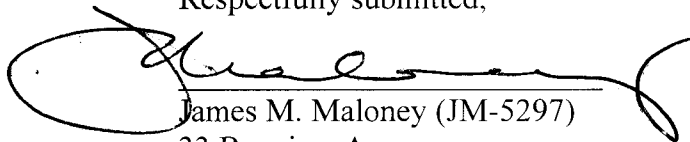
9. A true copy of a Civil Conference Minute Order by the Honorable James Orenstein, requiring Defendant to commence the process for seeking Rule 11 relief by March 13, 2006, if the parties have not settled, is attached hereto as **Exhibit 6**. The deadlines in that order were extended on April 3, 2006, after Plaintiff's counsel failed to communicate his client's answer with regard to settlement by the first deadline.

10. A true copy of correspondence written by the undersigned declarant to James Klatsky, Esq., attorney for the Plaintiff, and faxed on March 31, 2006 is attached hereto as **Exhibit 7**. It is respectfully submitted that the filing of this document as part of a motion would not run afoul of any Federal, Court or Individual Rule, especially given that the document is already Item 10 on the docket sheet herein.

WHEREFORE, for the reasons stated in the accompanying Memorandum of Law, this Court should: (1) impose Rule 11 sanctions against Plaintiff and its attorneys for frivolous conduct; (2) award Defendants costs and attorney's fees for defending this action and bringing this motion and any motion to dismiss; and (3) grant such other, further, and different relief as this Court may deem just and proper.

Dated: April 4, 2006  
Port Washington, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'James M. Maloney', with a large, stylized flourish extending to the right.

James M. Maloney (JM-5297)  
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